SPECIFIC PERFORMANCE—MUTUALITY—NEW YORK RULE.—The assignee of a vendee of real property not yet conveyed sued the vendor for specific performance. The plaintiff had assumed the obligations of the vendee and tendered performance to the defendant. *Held,* specific performance denied because of a wilful default on the plaintiff's part, but were it not for that fact, the decree would have been granted. *Arrow Holding Corp.* v. *McLaughlin* (Sup. Ct., Sp. T. 1921) 116 Misc. 555, 190 N. Y. Supp. 720.

The dictum of the instant case harmonizes with the general trend of the authorities. *Perry* v. *Paschal* (1897) 103 Ga. 134, 29 S. E. 703; *Hunt* v. *Hayt* (1887) 10 Colo. 278, 15 Pac. 410. The prevailing New York view, however, has been considered to be that where there is no mutuality of obligation, specific performance is denied. See (1916) 16 COLUMBIA LAW REV. 443, 450. This rule falls short of producing substantial justice, because it deprives a plaintiff who is willing to perform, of the benefit of the contract assigned to him, and permits a defendant to repudiate his obligation, although he would get all that he bargained for, if compelled to perform. The instant case indicates a tendency of the New York courts to limit this anomalous doctrine to the very cases which have already been decided in accordance with it. Heretofore at least one lower court case has been decided in accord with the dictum of the instant case. *Dodge* v. *Miller* (1894) 81 Hun. 102, 30 N. Y. Supp. 726, approved in *Veeder* v. *Horstman* (1903) 85 App. Div. 154, 160, 83 N. Y. Supp. 99. Although simplicity is desirable, it is submitted that the principle involved in the dictum of the instant case should be adopted as the New York rule, and that the cases already decided contrary to it should be considered sharply limited exceptions.

TAXATION—WRONGFULLY COLLECTED TAXES—LIABILITY OF FEDERAL COLLECTOR.—The plaintiff sues the defendant tax collector for taxes wrongfully collected and paid into the Treasury by a former collector. *Held,* Mr. Justice McKenna and Mr. Justice Clarke dissenting, an action against a collector to recover taxes wrongfully collected being personal, the defendant is not liable. *Smietanka, Collector of Internal Revenue* v. *Indiana Steel Co.* (1921) 42 Sup. Ct. 1.

Claims to recover taxes wrongfully collected over protest, if for less than ten thousand dollars, may be brought against the United States in the Court of Claims. (1911) 36 Stat. 1093, U. S. Comp. Stat. (1916) § 991 (5); *United States* v. *Emery, Bird, Thayer Realty Co.* (1915) 237 U. S. 28, 35 Sup. Ct. 499. Whatever the amount of the claim, the Commissioner of Internal Revenue is authorized to refund it on appeal. (1866) 14 Stat. 111, U. S. Comp. Stat. (1916) § 5944. At common law, the remedy was against the collector. *International Paper Co.* v. *Burrill* (D. C. 1919) 260 Fed. 664. He was personally liable. *Elliott* v. *Swartwout* (U. S. 1836) 10 Pet. 137. Collectors now have to transfer all funds collected by them to the Treasury. (1839) 5 Stat. 348, U. S. Comp. Stat. (1916) § 5713. This was held to free them from liability. *Cary* v. *Curtis* (U. S. 1845) 3 How. 236. Under subsequent statutes, the action against the collector survives, but upon certificate by the court that the collector has acted with probable cause, he is protected from execution under the judgment, which is paid out of the Treasury. (1863) 12 Stat. 741, U. S. Comp. Stat. (1916) § 1635. Even in the absence of such a certificate, the collector of the taxes seems to be protected by 14 Stat. 111, *supra; United States* v. *Frerichs* (1888) 124 U. S. 315, 8 Sup. Ct. 514 (*semble*). But the action remains personal. *Patton* v. *Brady, Ex'x* (1902) 184 U. S. 608, 22 Sup. Ct. 493. And a collector would be unprotected by statute against execution under a judgment obtained in a suit begun against him for taxes wrongfully collected by his predecessor, whether or not a certificate of probable cause had been issued. *Roberts* v. *Lowe*